In the High Court of Judicature at Madras

Dated: 25.09.2006

Coram:

The Honourable Mr. Justice P. SATHASIVAM
and
The Honourable Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.680 of 2006

Kadhir @ Ravi .. Petitioner

vs.

1. The State of Tamil Nadu,
   rep.by its Secretary to Government,
   Prohibition and Excise Department,
   Fort St.George,
   Chennai-9.

2. The Commissioner of Police,
   Greater Chennai,
   Egmore, Chennai-8. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus as stated therein.

For petitioner : Mr.M.Rajavelu

For respondents : Mr. M.Babu Muthu Meeran,
Additional Public Prosecutor

ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The petitioner, by name Kathir @ Ravi, challenges the impugned order of detention dated 31.03.2006, detaining him as "Goonda" under Section 3 (1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (in short "Tamil Nadu Act 14 of 1982").

2. Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor for the respondents.

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3. At the foremost, the learned counsel appearing for the petitioner, by taking us through para 4 of the grounds of detention, submitted that when the detaining authority was very well aware that the detenu has not moved any bail application so far and in the absence of any material, there is no need to pass the detention order. He also submitted that in the absence of material, the subjective satisfaction said to have been arrived by the detaining authority cannot be accepted.

4. In the light of the above contention, we verified para 4 of the grounds of detention, wherein the detaining authority has specifically stated that the detenu Kathir @ Ravi is in remand in S-12 Chitlapakkam Police Station Crime No.208/2006 and he has not moved any bail application so far. After saying so and after finding that there is real possibility of his coming out on bail by filing bail application before the Sessions Court or Higher Court since in similar cases bails are granted by the Sessions Court or Higher Courts and if he comes out on bail, he will indulge in further activities which will be prefejudicial to the maintenance of public order, passed the impugned detention order.

5. Learned counsel for the petitioner pointed out that though the detenu was arrested on 07.02.2006, the detention order was passed only on 31.03.2006 and till the said period, namely, 57 days, he has not moved any bail application and in such circumstance, the decision of the detaining authority that there is real possibility of his coming out on bail is very remote and no material for the same.

6. We are unable to accept the said contention for the following reasons.

The grounds of detention show that the detenu had six previous cases to his credit commencing from 1999 ending with February, 2006. The ground case relates to various offences punishable under Sections 341, 294(b), 392, 397 and 506(ii) IPC. It is true that nearly for a period of 57 days, the detenu had not moved any bail application. However, as rightly pointed out by the learned Additional Public Prosecutor, there is no bar in filing bail application either before the same Court or before the Higher Court. In such circumstances, taking note of all the materials as mentioned in the grounds of detention, the detaining authority has arrived the conclusion that there is a real possibility of his coming out on bail by filing bail application before the appropriate Court or before the Higher Court.

7. In this regard, it is useful to refer a Full Bench decision of this Court K.Thirupathi ..vs.. District Magistrate and District Collector, Tiruchirapalli District and another reported in 2005-2-L.W.

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(Crl.)946. After referring various decisions of this Court as well as the Supreme Court, the Full Bench has concluded as follows:

> "29. In view of the above, we hold that strict insistence of the usage of the word "imminent" is not necessary and the other convincing expressions like "real possibility", "very likely" or "most likely" can be used by the detaining authority to reflect its satisfaction with regard to immediate release of the detenu on bail. We answer the Reference accordingly".

In the case on hand, the detaining authority, while arriving subjective satisfaction, has satisfied that there is "real possibility of his coming out on bail by filing bail application".

8. Learned Additional Public Prosecutor has also brought to our notice, a recent decision of the Apex Court reported in Senthamilselvi ..vs.. state of Tamil Nadu and another(2006 (3) Crimes 63 (SC). Similar contention was raised before the Hon'ble Supreme Court at the instance of the detenu. In para 10, their Lordships have rejected the said contention and refused to interfere with the subjective satisfaction of the detaining authority. The said conclusion reads as under:

> "10. It was also submitted that since the detenu had not filed any bail application, the detaining authority could not have inferred that there was possibility of his being released on bail. Strong reliance is placed on several decisions of this Court. It has to be noted that whether prayer for bail would be accepted depends on circumstances of each case and no hard and fast rule can be applied. The only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be ipsi-dixit of the detaining authority. On the basis of materials before him, the detaining authority came to the conclusion that there is likelihood of detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of detenu being released on bail. It has been clearly stated that in similar cases orders granting bail are passed by various courts".

9. The above latest decision of the Apex Court makes it clear that based on the available material, if the detaining authority arrived its subjective satisfaction, namely, there is real possibility of his coming out on bail by filing bail application before

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appropriate court or higher court, such satisfaction is not to be interfered with. In the present case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of detenu being released on bail. In such circumstances and in view of the latest pronouncement of the Hon'ble Supreme Court, we are of the view that the subjective satisfaction arrived by the detaining authority cannot be faulted with and there is no valid ground for interference.

10. Learned counsel for the petitioner submitted that though the representation was made on 21.06.2006, the same has not been disposed of till this date. The learned Additional Public Prosecutor, on instructions, reports that the representation dated 21.06.2006 has been received by the Government only on 06.09.2006 and remarks were called for on 07.09.2006 and he further submits that the file is under circulation. In view of the same, there is no need to go into the contention relating to representation.

11. In these circumstances, we do not find any error or infirmity or valid ground for interference. Accordingly, the habeas corpus petition fails and the same is dismissed.

gl

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary to Government
   Prohibition and Excise Department
   Fort St. George
   Chennai 9.

2. The Commissioner of Police,
   Greater Chennai,
   Egmore, Chennai-8.

3. The Superintendent
   Central Prison,
   Chennai.
   (in duplicate for communication to detenu)

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4. The Joint Secretary to Government,
   Public (Law & Order),
   Fort St.George,
   Chennai-9.

5. The Public Prosecutor
   High Court, Madras.

Order in
H.C.P.No.680 of 2006

Dt.25.09.2006

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